



Cyber Laws For CxO

Be Aware... Be Empowered

March 2010

Editor

Naavi

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Adjudication is a system of justice dispensation envisaged in the ITA 2000 for any claim of a compensation by a victim of Cyber Crime.

It facilitates quick redressal of grievance and also simplifies the procedures as compared to a traditional Court.

“Adjudication” under ITA 2000 is not just an alternate dispute resolution mechanism but is the only dispute resolution mechanism available for Compensation claims for most contraventions.

It is therefore necessary for the Indian Corporate World to understand this mechanism and make proper use of the same.

Theme

Adjudication

In This Issue

Editorial: Meeting of Adjudicators

Knowledge+: Adjudication for Quick Justice

News Snippets: Blocking of website for defamation and others

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Questions and Answers

Archived Issues will be available at
<http://www.cyberlaws4cxo.com>

Editor's Note



Effectiveness of any legislation is measured by the ease with which the intended beneficiary of the legislation can invoke legal remedies and obtain relief. It is under this concept that we need to appreciate the thoughtful provision of the system of Adjudication as the exclusive grievance redressal mechanism suggested under ITA 2000 under Chapter IX in 2000.

It however took nearly three years after the legislation came into effect for the first set of Adjudicators to be appointed in India under the directions from the Bombay High Court when the Government decided to appoint the IT Secretaries of every State and Union Territory as the Adjudicators for the respective State. The office of the Cyber Regulations Appellate Tribunal (CRAT) however remained vacant until 2008 when Justice Sri Rajesh Tandon was appointed as the first Presiding Officer of CRAT.

The Adjudication was meant to provide simplicity to the judicial process for claiming compensation for contraventions under Section 43 by the public. It was a process which was meant to be on a "Fast Track" and avoid the delays inherent in the Civil Litigation process in India. The procedure was flexible enough to adopt the best practices of ADR and was freed from the strict regime of the Civil Procedure Code.

Despite these beneficial aspects of the Adjudication System, the undersigned believes that the system has not been used as widely and frequently as it should have been. One of the reasons for this is perhaps the lack of awareness of the process amongst the victims and the legal practitioners.

What is however not very pleasing is that many cases which ought to have been tried by the Adjudicators have been tried at other forums which had no jurisdiction to try the cases. Some of the cases were taken to Consumer Courts since the dispute involving intermediaries often manifests as an apparent service deficiency though it is actually a contravention of the Act. Even several High Courts which ought to have understood the jurisdictional limitations imposed in the ITA 2000 have on occasions appeared to ignore the same and taken up cases for trial which ought to have been taken up by adjudicators.

This issue is meant to increase the awareness of the system of adjudication in the IT industry so that a more effective use of the system can be made by the market. At the same time this issue pries open some of the grey areas in the system which require certain clarifications.

We are happy that this issue carries the interview of Justice Sri Rajesh Tandon who has actually expanded the role of the Adjudication system by expressing a view that Adjudicators can also take on trial offences under Chapter XI of ITA 2000. He has also indicated that on May 1 and 2, 2010, he has organized a meet of all the "Adjudicators" to further the awareness of the system. It is a welcome move which I have been suggesting for several years.

A handwritten signature in blue ink, appearing to read 'Ajay Ghosh'.

March 21, 2010

Hon'ble Mr. Justice Rajesh Tandon:- Presiding Officer, Cyber Appellate Tribunal



Honourable Justice Sri Rajesh Tandon Started career as advocate in 1968, has the distinction of being appointed as the Presiding Officer of Cyber Appellate Tribunal in Delhi. Appointed as Additional Advocate General (Misc.Writ) on 5th September 2003 he was looking after the work of Misc. writs in High Court of Uttarakhand and Uttarakhand cases at Allahabad High Court. He took oath as Judge of Uttarakhand High Court on third July 2003 at Nainital and as Judge of High Court of Uttarakhand on 26/06/2004.

Justice Tandon has authored many law books such as Guide to Electricity Laws, Cases and Materials on Transfer, Commentary on Rent Control Act and Dowry Prohibition Act. On 4th August, 1974, U.P.Govt. awarded Sahityik Puraskar on the book "Muslim Vidhi" in Hindi.

Justice Tandon retired on 30th June 2008 and was appointed as the first Presiding Officer of Cyber Appellate Tribunal.

Ed: I thank Sri Ankur Raheja, Advocate, New Delhi and Editor Cyber Law Times, for having personally met Justice Tandon and obtained the interview.

Adjudication system introduced as the specified system for adjudging on contraventions of ITA 2000 is now nearly a decade old. In your opinion, has there been an effective use of the system in India? If not why?

Powers have been given to the Adjudicating Officer vide Sections 46 and 47 of the Information Technology Act, 2000.

The offences under the Information Technology Act are as under:

- (1) Tampering computer source documents and Computer offences (Section 65 and 66)
- (2) Offences with messages etc. (Section 66A)
- (3) Punishment for dishonestly receiving stolen computer etc (Section 66B)
- (4) Punishment for identity theft and Impersonation (Section 66C and 66D)
- (5) Punishment for violation of privacy. (Section 66E)
- (6) Punishment of Cyber terrorism (Section 66F)
- (7) Publishing obscene information etc (Section 67, 67A and 67B)
- (8) Preservation and retention of information by Intermediaries. (Section 67C)
- (9) Un-authorized access to protected system. (Section 70)
- (10) Breach of Confidentiality and Privacy (Section 72 and 72A)
- (11) Offences related to Digital Certificates (Sections 71, 73 and 74)

For adjudicating the aforesaid crimes, the power has been given to the Adjudicating Officer. After the decision of the Adjudicating Officer, the appeal lies to the Appellate Tribunal under Section 48 of the Information Technology Act, 2000.

In my opinion, there is effective use of the system in India.

Interview of the Month. 1..



Justice Rajesh Tandon with over 40 years of experience in the legal field and a retired Judge of Uttrakhand and Allahabad High Courts was appointed the first Presiding Officer of the Cyber Regulations Appellate Tribunal (Now called Cyber Appellate Tribunal).

Justice Tandon is a man of deep academic interests and has authored many books on law.

**Justice Rajesh Tandon
PO, CAT**

Is there a periodical meeting of the adjudicator's of India for knowledge sharing?

Yes. The meetings were held with the officers at the level of Adjudicating Officers of different States as well as Union Territories. A Seminar/Conference is being organized on 1st and 2nd May,2010 of all the Adjudicating Offices of the States and Union Territories.

Can you indicate the nature of cases which has come to your notice in the ITA adjudicator's forum?

In 2007, an appeal was filed by Sh.Harishkumar C.Vakaria against M/s India InfolineLtd. Challenging order of Adjudicating Officer under Section 46 of the IT Act. The petitioner in the petition before the Adjudicating Officer stated that huge losses have occurred to the petitioner due to the fraudulent, illegal, dishonest conduct and malpractices followed by the respondent in relation to the online trading terminal and online Demat Account.

In 2009, eight appeals were filed. Some of the cases were filed by M/s Mascon Global Ltd. against e-mail message received from GMAIL.com co Google Inc. California, USA and some of the complaints were filed before the Certifying Authority appointed under the IT Act.

ITA 2008 made certain modifications in the role of the Adjudicator. Has it made a positive different to the system?

By the ITA 2008, certain modifications in the role of the Adjudicator have been made. Adjudicating Officer has been given wide powers especially Section 66F has been added regarding Punishment for cyber terrorism.

Interview of the Month-1...



Justice Rajesh Tandon
PO, CAT

Justice Rajesh Tandon, the first Presiding Officer of the Cyber Regulations Appellate Tribunal (Now called Cyber Appellate Tribunal) shares his valuable views on the system of Adjudication and the role of Cyber Appellate Tribunal as a means of dispute resolution and justice dispensation in India.

Do you think it would help the public if Cyber Appellate Tribunal is set up in multiple Cities?

By holding several meetings/seminars and Conference, the Cyber Appellate Tribunal set up at New Delhi have given wide public awareness in various States. There will be no use for setting up Appellate Tribunal in multiple Cities. In every State, Adjudicating Officer has been given powers to adjudicate the disputes and complaints.

The Cyber Appellate Tribunal under ITA 2008 envisages “Multi Member Tribunals” with technical members assisting the Chairman. Do you think that this may make the system more efficient?

The work is being conducted by the Chairperson and the same work will be done by the Members if so appointed. Therefore, there will be no difference of work and the work of public awareness process is being conducted from time to time.

What are the challenges faced by adjudicators in carrying out the duties of the Adjudicator along with their administrative responsibilities as IT secretaries?

IT Secretaries are understanding their responsibilities in accordance with Section 46 and 47 of the IT Act. So far we have not come to know about any difficulty or challenge faced by the Adjudicating Officers in carrying out the duties of the Adjudicator.

Interview of the Month-2



Sri Ashok Kumar Manoli, IAS, is the Secretary IT & BT, Government of Karnataka. Started his career as an Engineer in ITI, Mr Manoli joined the IAS in 1982 and served in several key positions in the State.

A person with keen interest in Peoples Empowerment, he has been especially interested in Rural Development and Panchayat Raj.

Responsible for the development of two of the major development portfolios namely Information and Bio Technology, he has been the driving force behind many new IT initiatives taken in the State. In 2009, he took a major initiative to make Bangalore the Information Security Capital of India by organizing a widely acclaimed Bangalore Cyber Security Summit.

Adjudication system introduced as the specified system for adjudging on contraventions of ITA 2000 is now nearly a decade old. In your opinion, has there been an effective use of the system in India? If not why?

Yes. But needs lot of improvement in terms of logistics support, common portal, and revision of rules of conducting business.

Can you indicate the nature of cases which has come to your notice in the ITA 2000 adjudicator's forum?

From the year 2004 till date, a total number of 62 cases have been received from Cyber Crime Police. All the cases relate to non-maintenance of Log Register by the Cyber Cafes. The nature of the crime committed is sending obscene/abusive e-mails.

Is there a periodical meeting of the adjudicator's of India for knowledge sharing?

NO. But it is required badly.

ITA 2008 made certain modifications in the role of the Adjudicator. Has it made a positive difference to the system?

YES

Interview of the Month-2



Ashok Manoli, IAS

Sri Ashok Kumar Manoli, IAS, is the Secretary IT &BT, Government of Karnataka. Started his career as an Engineer in ITI, Mr Manoli joined the IAS in 1982 and served in several key positions in the State.

Do you think it would help the public if Cyber Appellate Tribunal is set up in multiple Cities?

NO. Not at this point of time.

The Cyber Appellate Tribunal under ITA 2008 envisages “Multi Member Tribunals” with technical members assisting the Chairman. Do you think that this may make the system more efficient?

NO

What are the challenges faced by adjudicators in carrying out the duties of the Adjudicator along with their administrative responsibilities as IT secretaries?

NIL

Do you think there is a case for a multi member Adjudication Board with IT Secretaries assisting a judicial person or vice versa?

NO

Under the present system does Adjudicators have access to the assistance of experts in private sector when required.

NO

Do you think Adjudicators can use Suo-Moto powers to order investigation when they come across credible information on Cyber Crimes that affect the society.

YES

Delhi High Court Orders Blocking of Zone-h.org

Recently it was noticed that the website of a company called zone-h.org was blocked for Indian view. This raised queries from many security watchers speculating the reason for such a step since this followed the recent attacks by a section of the media on the earlier Government action to ban savitabhabhi.com for pornographic content.

It was however interesting to note that the case of blocking of zone-h.org was different. It had followed from an ex-parte order from Delhi High Court for an interim blocking of the site as prayed for in a “Defamation Suit” between a Hyderabad based Company called E 2 Labs Pvt Ltd and the owners of the zone-h.org.

It was also interesting to note that in this case the order was made on a charge of “Defamation” under the sections 66 and 66 A of the ITA 2008 which was apparently endorsed by the High Court through the interim decision to accept the prima-facie occurrence of the alleged offence.

Yet another interesting aspect of this case was that the Court has relied on the complainant’s counsel himself to deliver the copy of the order and the summons for the counter to be sent to the defendants through e-mails by the complainant’s counsel.

In case the summons are not delivered and the defendants donot respond in time, the Court may proceed to decide the case ex-parte and make the injunction permanent.

This incident underscores the need for the Registrars of High Courts to develop the minimal expertise of sending digitally signed notices to the defendants rather than relying on the complainant himself.

Also this is a case where the High Court has accepted a complaint for trial which ought to have come under the jurisdiction of the adjudicators and CRAT since the offences alleged are under Sections 66 and 66A of ITA 2008. Perhaps these aberrations would be corrected when the Court takes up the hearing of the case next time.

Gorakhpur Fraud

It is reported that a BPO in Gorakhpur is running a business model where it is appointing franchisees by collecting a franchise fee of Rs 1 lakh and providing them with some business to be executed for which they will be paid at the rate of Rs 14000/- per computer per month. For a 10 seat franchisee the scheme projects a monthly income of Rs 1 lakh which is 100 % of the franchisee fee.

However the work which the franchisees are expected to get executed includes “Creation of imaginary log in IDs and Passwords” for a target website in US possibly as a criminalware for spamming or phishing.

Since this business is reported from Gorakhpur, it is referred to as the Gorakhpur Fraud. Similar schemes of collection of advance money and passing on what is touted as a “Home Based business opportunity” is prevalent in other places.

This business model is a fraud and involves many contraventions of ITA 2008 making both the franchisor and the franchisee liable for imprisonment and fine. It also endangers many genuine Internet business houses by spoiling the public confidence on “Internet business offers”, requiring the law enforcement to step in even if no complaint is made by any victim.

Columbian Voting System attacked by Hackers

Unidentified hackers reportedly struck the computerized system used to transmit voting data in Colombia's legislative elections, disrupting the vote count between March 14th and 15th.

India which heavily depends on the Electronic Voting System to protect its democracy should be wary of the Risks of Electronic Voting since it has continued to adopt a “Non Cyber Law Compliant EVM system” for a long time now. In the present EVM system, a physical document is linked to an electronic document and the link or the voting is not adequately authenticated as per ITA 2008. Though our EVM system is not Internet dependent and therefore not prone to the risks which the Columbian System has been exposed to, it is necessary for the CEC of India to review the process from Information Security perspective and Cyber Law Compliance.

Internet Investment Fraud hurting the Advertising Industry

In one business model operating from Bangalore, Delhi, Coimbatore and other places, a company is offering 100% investment return for the investors opening a given hyperlink and viewing an Internet Advertisement for a few seconds. Further it is found that the investors are often given no returns in cash and only shown credits in the account. The marketing is done using the MLM strategy and one investor helps raise money from another until the entire group has lost lakhs of rupees and made the website owner rich enough to run out of the country and settle in a foreign land.

This in turn cheats the advertiser by providing him an advertisement benefit which is of no commercial value but still he charging him for the same. Since the money is raised as an "Investment", it violates the SEBI control on raising funds from public.

Law enforcement is finding it difficult to take up investigations of such cases for lack of the victims coming forward to complain. But we need to realize that this kind of a fraud is also a fraud on the "Advertising Industry" and diminishes the confidence of the advertisers on Internet advertising system.

Many Internet advertisers in India are being defrauded in this incident since they have paid for advertising that is part of a fraudulent advertisement exposure system. This is like a print publication system which claims false circulation figures to get advertising from clients.

The Internet advertising industry has to therefore take up such incidents as frauds on the industry and bring the law enforcement into action.

Admitted Section 66F and Sec 70 Crime on Internet go Uninvestigated

Section 70 of ITA 2000/2008 deal with hacking or attempt to hack a "Protected System" as defined by the Government and makes it punishable with 10 years imprisonment. Similarly, under Section 66F of ITA 2008, a Cyber Terrorism offence is recognized when a sensitive information of the Government is accessed or a Government property is damaged (if there is an intention to harm the interest of the country etc).

In cases of suspected Cyber Terrorism it is not necessary for the Government to wait for somebody to file a formal complaint before initiating action. In fact it is the duty of the intelligence wing of the Government to discover such information and act even if no complaint is made.

Recently some documents on the Internet revealed that Several Government websites were hacked by an employee of a company called E 2 Labs based in Hyderabad and the information was used to bid for security business with the same Government Agencies.

Though this information was made public by the said website and was accessible to the intelligence wing of the Government of India, no action was apparently initiated by the Government in this regard to investigate, find out the truth, take corrective action and inform the public.

This indicates that our security agencies may not be fully prepared to conduct Cyber Intelligence activities. May be there is a need for building a National Cyber Crime Information Collection Network with direct participation of the public to support the Government in its Cyber Patrolling requirements.



**Naavi's ITA 2008 Emergency Help Center
for Corporate Directors and CEOs**

Call Now or E-Mail: 91-9343554943 : naavi@vsnl.com

Adjudication for Quick Justice

Taking into account the rapid developments in technology, techies often say that one year in the Internet is equal to at least 4 years in the physical space. This was perhaps under the consideration of those who drafted Information Technology Bill 1999 when they wanted a new Cyber Crime related justice dispensation system to replace the current system where Cases typically drag on for years. “Adjudication” supported by “Cyber Regulations Appellate Tribunal” was an outcome of this effort.

The IT Bill 1999 did undergo some significant changes before being passed on May 17th in the Loksabha as the now famous Information Technology Act 2000 (ITA 2000). After the major amendments to ITA 2000 passed with effect from October 27, 2009, we now have ITA 2008 in place as the foundation of Cyber Laws in India and contains the current provisions of Adjudication applicable to Contraventions of the Act.

The essential part of Adjudication system is the reduction of time in completing the process of awarding compensation to a victim of an ITA 2008 contravention to around 4 months . It also aims at bringing in IT savvy persons to sit in judgment of the complicated Cyber Crimes. In order to understand how these objectives have been achieved so far and how they are expected to be achieved in future, we need to analyse the relevant provisions of the Act .

The foundation for “Adjudication” in ITA 2008 stems from the definition of the term “Adjudicating Officer” as per Section 2.1 (c) of the Act which states,

"Adjudicating Officer" means adjudicating officer appointed under subsection (1) of section 46;

Section 46 of the Act states as follows:

Sec 46: Power to Adjudicate

(1) For the purpose of adjudging under this Chapter whether any person has committed a contravention of any of the provisions of this Act or of any rule, regulation, direction or order made thereunder which renders him liable to pay penalty or compensation, the Central Government shall, subject to the provisions of sub-section(3), appoint any officer not below the rank of a Director to the Government of India or an equivalent officer of a State Government to be an adjudicating officer for holding an inquiry in the manner prescribed by the Central Government.

(1A) The adjudicating officer appointed under sub-section (1) shall exercise jurisdiction to adjudicate matters in which the claim for injury or damage does not exceed rupees five crore

Provided that the jurisdiction in respect of claim for injury or damage exceeding rupees five crore shall vest with the competent court.

(2) The adjudicating officer shall, after giving the person referred to in sub-section (1) a reasonable opportunity for making representation in the matter and if, on such inquiry, he is satisfied that the person has committed the contravention, he may impose such penalty as he thinks fit in accordance with the provisions of that section.

...Contd

(3) No person shall be appointed as an adjudicating officer unless he possesses such experience in the field of Information Technology and Legal or Judicial experience as may be prescribed by the Central Government.

(4) Where more than one adjudicating officers are appointed, the Central Government shall specify by order the matters and places with respect to which such officers shall exercise their jurisdiction.

(5) Every adjudicating officer shall have the powers of a civil court which are conferred on the Cyber Appellate Tribunal under sub-section (2) of section 58, and -

(a) all proceedings before it shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code;

(b) shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

(c) shall be deemed to be a Civil Court for purposes of order XXI of the Civil Procedure Code, 1908

This section not only defines who is an “Adjudicator” but also defines his role, jurisdiction and powers.

The powers under this section are meant to adjudge “Whether any person has committed a contravention of such of the provisions of the Act which renders him liable to pay penalty or compensation under this Act”.

The word “Penalty” has been used in ITA 2008 mainly in Chapter IX under sections 43, 44, 45 as well as under Chapter XI under sections 71, and 73. The word “Compensation” has been used in Section 43 and 43A. One interpretation therefore is to consider that “Adjudication” can be used only for contravention of these sections and not for others.

Yet another possible interpretation is that the word “Penalty” is used in this section in generic sense and hence it also covers all sections under Chapter XI where penalties are prescribed in the form of “imprisonment” or “fine”.

A third and a more acceptable interpretation is that the Adjudicator can take on trial any contravention under Chapter IX or any Offence under XI. However, since his powers are only to award “compensation”, he can only award compensation to the victim but may not be empowered to award a sentence or impose a fine as is normally done in criminal courts. This defines a mutually exclusive and distinctive roles for the Adjudicator and Criminal Courts in respect of offences under Chapter XI of ITA 2008. Courts will determine the imprisonment and fine while the Adjudicator will estimate the extent of civil liabilities.

Thus the “Adjudicator” becomes the main arbitrator whenever the claim for compensation arises on account of a Cyber Crime and the amount of the claim is upto Rs 5 crores.

Under powers indicated in the same section 46, the Government of India has appointed all IT Secretaries of a State or Union Territory as the Adjudicator for the respective State or Union Territory by means of a notification dated March 25, 2003.

...Contd

The powers provided to the Adjudicator is “Exclusive” since under Section 61 of ITA 2008,

“No court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act or the Cyber Appellate Tribunal constituted under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act”

It is therefore clear that if a claim for compensation arises on account of a contravention of any of the provisions of ITA 2008, the only Court of Jurisdiction is the office of the Adjudicator in one of the States where the contravention has been committed. Cyber Appellate Tribunal or CAT (Earlier called Cyber Regulations Appellate Tribunal or CRAT) is the appellate authority on the orders of the Adjudicator. Further appeal against the order of the CRAT will prevail with the High Court (probably of the State where the Adjudicator’s jurisdiction arose).

It is therefore clear that a Consumer Forum or even the High Court is not the designated forum of Trial in respect of claim for compensation arising out of any of the contraventions of the ITA 2008. High Court will however have the appeal jurisdiction.

The detailed procedure of how the Adjudicator has to accept an application and dispose it off is contained in the rules notified on March 17, 2003. ([Available at naavi.org](http://naavi.org)) (Please also refer to the Q&A section of this news letter for additional procedural information).

Any discussion on Adjudication is incomplete without a discussion on the CRAT and its powers. ITA 2008 has made extensive changes to the constitution of CRAT (now called CAT). In brief, CAT is a multimember body of which the Chairman is a judicial officer and one or two others may be technical members appointed in consultation with the Chief Justice of India. The Presiding officer of CAT may constitute one or more benches and assign a case for decisions.

Both the Adjudicator as well as the CAT shall have the powers of the Court but are not bound by the Civil Procedure Code. They can use the powers for summoning witnesses, receiving affidavits, ordering discovery of evidences etc but can conduct the proceedings as an enquiry, allow the person or his representative to be present and argue during the proceedings etc.

Under Section 47 of the Act, an adjudicating officer shall take the following factors in determining the amount of compensation.

- (a) the amount of gain of unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused to any person as a result of the default;
- (c) the repetitive nature of the default

The Concept of Adjudication is still in its nascent state of development and hence there are certain practical problems in the system and they need to be sorted out.

..Contd

For example, under the Adjudication rules notified on March 17, 2003, the adjudication process can be undertaken by the adjudicator on a “Suo Moto” basis if warranted. These will be required when there is any information available with the Adjudicator about a cyber incident having an adverse implication against common public. However, so far there has been no report of any Adjudicator having exercised this power.

There have been incidents where the respondent may be out of the country or unable to spend money for physical appearances. Though the rules provide for the use of “Online settlement of enquiry or disputes or for taking evidence” and such services being on offer by www.arbitration.in, so far no adjudicating officer has made use of such cost effective and time saving measures.

It is also envisaged under the rules that as far as possible, every application shall be heard and decided in four months and the whole matter in six months. However this is a rule which is not being adhered to and cases drag on for years even in the adjudication process.

Probably these are teething problems which the CAT in consultation with the Government may try to address.

I therefore suggest that as a first step, CAT should assume certain administrative measures for

- a) Regular communication with the adjudicators through monthly or quarterly meetings in different locations to discuss the pending issues and take remedial measures.
- b) Maintain a website and post information on applications received at various adjudicators and the status of the disposal.
- c) Provide for periodical review of delayed applications and make suitable arrangements for quick disposal as may be required.
- d) Organize trainings and workshops for adjudicators to enable clarity on various issues and uniformity in application across different states.
- e) Encourage each adjudicator to set up “Online settlement facilities” .
- f) Encourage each adjudicator to appoint atleast one assistant to exclusively take care of the administration of the Adjudicator’s office along with his other duties
- g) When the jurisdiction in respect of a complaint overlaps between two states, encourage a formal or informal arrangement where by the two adjudicators can collaborate in the form of a multi member adjudication panel ... etc.

Hopefully the CAT will initiate necessary steps to ensure that the institution of adjudication becomes a successful grievance redressal mechanism so that any victim whether he is a company or an individual would appreciate the quick and fair disposal of any dispute arising out of ITA 2008. This will go a long way in the society giving better respect to the legislation itself .

Naavi

Attention Corporate Executives !
31st of March is the deadline for this year’s Clause 49 declaration to be frozen.
Have you done an ITA 2008 Compliance Audit?
.. to confirm that all regulatory compliances have been completed by your company?

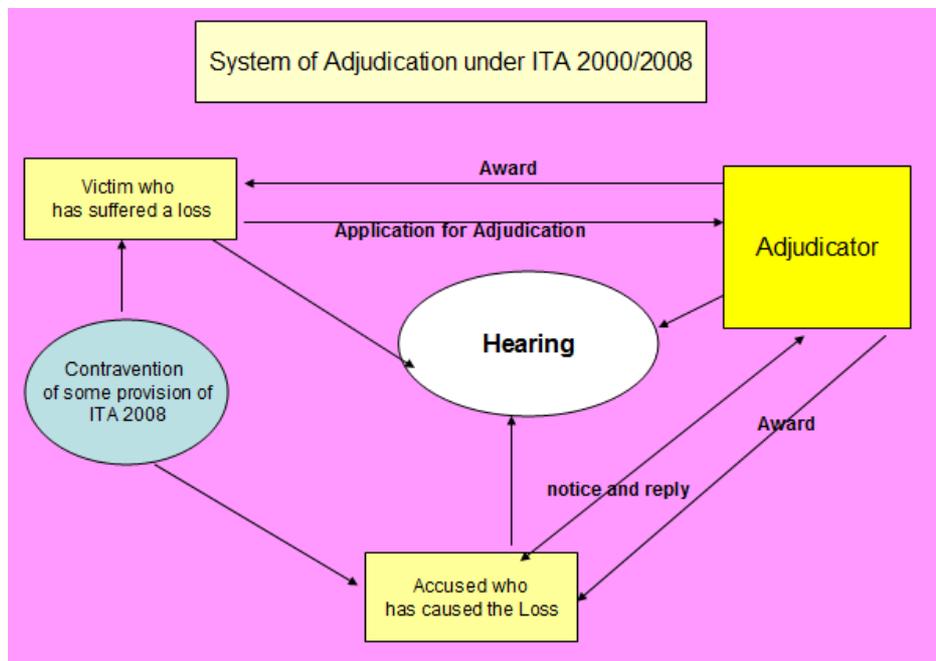
Questions and Answers

We intend using this section of the news letter to answer the Cyber Law related queries raised by our readers. This being a special issue on Digital Signatures we are using this space to explain some of the basic concept of Digital signatures.

We appreciate if queries are raised by persons indicating their Name, Occupation and Contact details. We however don't want to restrain the readers from raising questions without revealing their identity. Such readers may therefore send the questions as "Anonymous" in which case even their e-mail ID would not be provided on the news letter.

All questions may however be sent by e-mail to naavi@in.com by e-mail with the subject line containing "Cyber Laws for CxOs".

Editor



How Does the system of Adjudication work?

1. Victim identifies a loss on account of a contravention of ITA 2008
2. Applies for adjudication to the adjudicator of appropriate jurisdiction along with the requisite fee and available evidence
3. Adjudicator verifies contravention based on prima-facie evidence and if necessary orders the Police to investigate and report to him
4. On confirmation of the contravention and identification of the accused, adjudicator sends notice to him demanding reply.
5. On receipt of the reply from the accused, adjudicator will arrange hearing as required and arrive at his assessment of whether the contravention has occurred, whether it is attributable to the accused and what is the fair compensation payable to the applicant and awards appropriate compensation.
6. If the offender does not pay, victim may invoke a request for recovery with the adjudicator who will apply revenue recovery process to get compliance of his order.
7. If either party is aggrieved, they may prefer an appeal to CRAT .

What is the Procedure for application

1. Use the format of the application enclosed with the notification of 17th March 2003. use professional assistance if required.
2. Calculate the adjudication fee based on the following table and take a DD favouring “Adjudicating Officer Information Technology Act, (Name of State or Union Territory)
3. Wait for further information from the adjudicating officer
4. Reply any queries received from the adjudicator
5. Attend hearings as required
6. Receive order and wait for compliance from the accused
7. Appeal to CAT if required after getting certified copies.
8. If offender neither appeals further nor complies, victim may appeal to Adjudicator for assistance in recovery of the awarded compensation.

Table of Adjudication Fees

Fee upto Rs 10,000	10% ad valorem rounded of to nearest next hundred
From 10001 to Rs.50000	Rs. 1000 plus 5% of the amount exceeding Rs.10,000 rounded of to nearest next hundred
From Rs.50001 to Rs.100000	Rs 3000 plus 4% of the amount exceeding 50000 rounded off to the nearest next hundred
More than Rs. 100000	Rs 5000 plus 2% of the amount exceeding 100000 rounded off to the nearest next hundred

Plus: Fee for every application: Rs 50

Eg: For compensation of Rs 2 lakhs, total fee would be Rs 7050/-

What is the Procedure for Respondent

1. Study the Adjudicator’s notice and the accompanying complaint information
2. Take professional assistance if required
3. Respond within the specified time as you deem fit. Remember that if you donot respond, the adjudicator may take an ex-parte decision.
4. Attend hearing and present your case as required.
5. On receipt of a copy of the award, respond appropriately.. Pay as required or appeal to CAT after obtaining a copy of the order.

Questions and Answers

I have only the e-mail/Web address of the accused. I donot know his name and physical address. Can I still apply for the adjudication?

Yes. Provide whatever evidence is in your hands and co-operate with the adjudicator if he orders an investigation for more information. Preferably file a complaint with the Police also though this is not mandatory for going for adjudication.

Is it necessary to appoint a lawyer to assist me?

It is not mandatory that you should be represented only by a lawyer registered for practice. In most cases you may send your complaint yourself directly. If required take the assistance of a professional who is conversant with Cyber Laws and Technology whether he is practicing or not for preparing the application as well as to represent you or accompany you during the hearings.

Can I present witnesses during the hearing?

Yes, you can present affidavits and also witnesses in person as may be required.

Where is the Address of the Adjudicator available?

Adjudicator is the IT Secretary of the State where the adjudication is preferred. List of IT secretaries as on date can be obtained at Naavi.org

The list contains the phone numbers and e-mail addresses. Obtain the physical address by contacting the office.

Complaint may be filed with the adjudicator of the state within the boundaries of which at least one Computer used for commission of contravention is situated. It could be the state where the victim or the accused or the criminal's facilities are located.

Who will bear the cost of adjudication?

At the time of application, the applicant will bear the cost by way of the fees. He can claim damages inclusive of the costs and if the adjudicator is satisfied, the order may include costs of the process as well as other associate costs. Adjudicator has the discretion not to allow the costs if he so desires.

Can I withdraw the Adjudication Application?

In case you want to withdraw the application after filing, you can do so explaining the reasons to the Adjudicator.

The fees already paid may not be returned.

If the adjudicator comes to the conclusion that the application was frivolous, he may also impose a penalty on the applicant himself and order it to be paid to the accused.

If you have come to a compromise with the accused, a joint request may be made to the adjudicator advising the terms of the compromise arrived at and the adjudicator may take it as a “Compounding” request and order accordingly.

Appeal to CAT would not be permitted in case of an adjudicator’s order following a compromise. Adjudication fee may not be returned.

Can I bring an Injunction for an Adjudication Proceeding filed against me?

According to Section 61, no Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act or the Cyber Appellate Tribunal constituted under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Hence the only remedy for the respondent is to apply to the Adjudicator himself for dropping of the adjudication and appeal if he goes ahead with his order. Other Courts cannot interfere. (Except when the claim is over Rs 5 crores when the Adjudicator does not have the jurisdiction in the first place).

The appeal lies with CAT and not with the High Court at this stage. Appeal to CAT cannot be made until the adjudicator completes the process and gives his award.

What should the applicant do if the Adjudicator does not respond to his application or keeps the issue pending?

The exact procedure to be adopted in such a case is not specified at present in the rule. The suggested remedy is to make an appeal to the CRAT stating that the order of the Adjudicator is not enclosed since the adjudication process is not complete and the remedy sought is to direct the adjudicator for expeditiously completing the process.

Questions and Answers

I have received an excess Bill from my service provider due to my Wireless modem being misused. Should I go to the Consumer Forum?

No. Misuse of wireless modem may indicate unauthorized access to the computer system and is covered by Section 66 as an offence and eligible for compensation under Section 43. Hence an adjudication application should be filed and other forums donot have jurisdiction due to Sec 61.

Manager of my online broker has executed unauthorized share transactions on my account. Should I seek arbitration as per the terms of our agreement ?

If the allegation is against the broking firm about the commission of an offence, the arbitration agreement may become infructuous. It is preferable to seek adjudication if any contravention of ITA 2008 can be proved such as unauthorized modification of an order placed through e-mail or an online application.

Is it mandatory to register an FIR before approaching the Adjudicator?

Not necessary. It is however desirable so that the adjudicator can pick up some assistance from the investigations conducted by the Police. The adjudicator can also order the Police to investigate and report to him the findings.

*P.S: Views expressed here may be considered as suggestive and other experts may have differing opinions.
Answers given here are for academic clarification and debate and do not constitute legal advise.*

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Building a Panel of Cyber Law Experts in India

Cyber Laws For CxO is promoted by Naavi the founder of www.naavi.org and the associate sites.

With the growing number of Cyber Crimes in India and the expanding knowledge base it is necessary to expand the knowledge resource available for the community for Cyber Law related advisory services.

When Naavi started working on this area in 1998 there were a very few practitioners in the field of Cyber Laws in India. In 1999, he was the first author of a book on Cyber Law. But in 2010, the situation is different. There are many experts who have emerged across the Country. There have been many authors who have written books on the subject.

Cyber Laws For CxO will therefore like to build a new panel of Cyber Law experts in the Country. May be in due course some of these panel members would join the editorial board of this publication and this will emerge as a knowledge resource nursed by the community of the experts of which Naavi will only be history.

We therefore invite Cyber Law Experts to send their credentials so that they can be listed in the panel of known Cyber Law experts in the Country for public to contact them for information and advise if required.

At this point of time we may not make any warranties on verification of credentials. We will however reserve the right to refuse inclusion of any person if reasons do exist for such a decision.

The website of the magazine will carry this list. In future issues, when we receive questions from the readers, we will provide an opportunity for these experts to present their views if they are willing.

In due course we feel that young law graduates who want to pursue a corporate career can use this forum for registering themselves and also express their expert views on various related subjects. Companies may also use this forum to find appropriate resources for legal advise or for recruitment of legal professionals so that this forum may emerge as an “Exchange House of Cyber Law Related Resources”.

We invite suggestions from both the Cyber Law Community as well as the CxO community to improve the utility of this publication which is now three months old.

Interested persons may contact naavi@in.com with necessary information.

Na. Vijayashankar
(Naavi)

Disclosure

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